

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

<b>IN THE MATTER OF:</b>  <b>RANDY GRIFFIN; Jasper County, Iowa</b>	<b>ADMINISTRATIVE CONSENT ORDER</b>  <b>NO. 2004-AQ-60-A1 NO. 2004-SW-40-A1</b>
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**TO: Randy Griffin  
8615 Highway 6  
Kellogg, IA 50135**

**I. SUMMARY**

This Administrative Consent Order (Order) is entered into between Randy Griffin and the Iowa Department of Natural Resources to resolve the pending contested case arising from the appeal of Administrative Order Nos. 2004-AQ-60 & 2004-SW-40. Pursuant to this Order, Randy Griffin agrees to pay a penalty in the amount of \$500 by May 1, 2007.

Any questions regarding this Order should be directed to:

Jon C. Tack  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515-281-8889

**II. JURISDICTION**

This Order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II, (air quality) and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
Randy Griffin**

**III. STATEMENT OF FACTS**

1. Randy Griffin is the owner of property located in Section 34, Township 80 N, Range 18 W, locally known as 8615 Highway 6, Kellogg, Iowa. Mr. Griffin resides at this address and operates a business, Griffin Excavating, from this location.
2. In May of 2000, Randy Griffin was informed of the restrictions on the open dumping and open burning of solid waste via a letter and inspection report issued by the department.
3. On June 15, 2004, IDNR Field Office #5 received a complaint alleging the illegal open dumping and burning of solid waste by Randy Griffin on the subject property.
4. On June 16, 2004, Environmental Specialist Jeff Theobald investigated the complaint against Randy Griffin. Mr. Theobald observed a smoldering pile of construction and demolition wastes, tree limbs, and other miscellaneous solid wastes. Mr. Griffin was present during the inspection. Photographs were taken. Mr. Griffin alleges that these materials were generated on site.
5. On June 28, 2004, IDNR Field Office #5 issued a Notice of Violation to Randy Griffin due to the illegal open dumping and open burning that was observed at his property on June 16<sup>th</sup>. The letter contained a deadline of July 26, 2004 for the removal of all solid waste and the submission of receipts verifying proper disposal. The letter was sent by certified mail but was not accepted. Mr. Theobald hand delivered the Notice of Violation during a follow-up inspection on July 22, 2004. Photographs were taken. On that date, Mr. Theobald observed that the solid waste that had been previously burned remained on site. When contacted by telephone, Mr. Griffin indicated at that time that he was waiting for the Notice of Violation before proceeding with the cleanup of the waste. Mr. Griffin was then given an extension until August 16, 2004 to complete the removal of all of the solid waste. On July 23, 2004 a letter was sent to Mr. Griffin confirming the August 16<sup>th</sup> deadline.
6. On August 17, 2004, Mr. Theobald conducted a follow-up inspection. The previously observed solid waste had not been removed as of that date. An additional waste pile was also observed. Photographs were taken. Mr. Griffin was contacted by telephone on this date. Mr. Griffin acknowledged that the cleanup had not occurred. Mr. Griffin was given a new deadline of August 23, 2004.
7. On August 24, 2004, Mr. Griffin contacted IDNR Field Office #5 and indicated that he had not yet removed the solid waste from his property.
8. On December 17, 2004 the Department issued Administrative Order Nos. 2004-AQ-60 & 2004-SW-40. Randy Griffin filed a timely appeal of the Order.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
Randy Griffin**

9. On October 27, 2006, Randy Griffin notified the Department that the solid waste had been removed from his property.

10. On November 1, 2006, the Department inspected the property and confirmed that the solid waste had been removed.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-121.

2. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit dumping or depositing or permitting dumping or depositing of any solid waste at any place other than a facility permitted by the Department, unless otherwise provided by rule. The above facts disclose violations of these provisions.

3. Iowa Code section 455B.133 provides that the Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-30 relating to air quality.

4. Rule 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The materials burned in this case do not qualify for exemption or variance. The above facts disclose violation of this provision.

**V. ORDER**

THEREFORE, the Department orders and Randy Griffin agrees to pay a penalty in the amount of \$500 by May 1, 2007.

**VI. PENALTY**

1. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000 per day for solid waste violations. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
Randy Griffin**

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; Chapter 567 IAC 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty. The administrative penalty assessed by this Order is determined as follows:

a. Economic Benefit. Randy Griffin has achieved an economic benefit from his illegal conduct. Although Randy Griffin has now removed and properly disposed of the remaining wastes, an economic benefit has been realized in regard to the waste which was consumed by the fire. Costs avoided include landfill disposal fees, labor costs, and related expenses. Based upon these facts, \$100 is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. The illegal open dumping and open burning of solid waste threatens the groundwater of the state. Randy Griffin has been informed of the applicable regulations. Based on the above considerations and the multiple days of violation, \$400 is assessed for this factor.

c. Culpability. Randy Griffin has been informed of the applicable regulations and provided with multiple deadlines for clean up. Mr. Griffin is in the business of demolition contracting, a component of which is the disposal of the demolition wastes. Persons engaged in this business have a duty to be aware of the regulations applicable to their practices. From the time of initial discovery of the violations, nearly 2 ½ years elapsed until the removal of the solid waste. In order to resolve this matter consensually, no penalty is assessed for this factor.

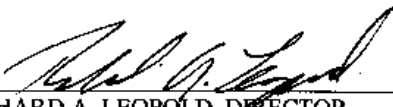
**VII. APPEAL RIGHTS**

Iowa Code sections 455B.138 and 455B.308 and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Randy Griffin. By signature to this Order, all rights to appeal this Order are waived and the pending contested case is hereby resolved and dismissed.

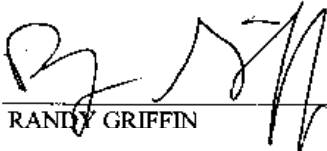
**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
Randy Griffin**

**VIII. NONCOMPLIANCE**

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Divisions III and IV of this Order. The Department reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in this Order but which may arise from the facts summarized in Division III of this Order.

  
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RICHARD A. LEOPOLD, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 2 day of  
May, 2007

  
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RANDY GRIFFIN

Dated this 1 day of  
May, 2007